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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re MIA S. et al., Persons
Coming Under Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.S.,

Defendant and Appellant.

B293277

(Los Angeles County Super.
Ct. No. 18CCJP04823 A, B)

APPEAL from an order of the Superior Court of Los
Angeles County, Frank J. Menetrez, Judge. Dismissed.

Terence M. Chucas, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and David Michael Miller, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Father appeals the juvenile court's order finding jurisdiction over his then-five-year-old daughter and then-three-year-old son, sustaining five counts under Welfare and Institutions Code section 300, subdivision (b)(1).¹ The juvenile court sustained four separate counts against mother, finding that mother's current and historic substance abuse, physical abuse, and mental and emotional problems endangered the children. The court also sustained a single count against father that his current and historic substance abuse placed the children at risk. Father appeals the court's jurisdictional finding as to father, but not those sustained against mother. We conclude father's appeal is nonjusticiable because he does not challenge all bases for jurisdiction and has not provided sufficient reason for us to exercise our discretion to address his appeal on the merits.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father met in 2012, dated, and lived together for a short period of time, but are no longer in a relationship. Father is the presumed father of daughter, born in August 2013, and son, born in November 2014. Father also has two other children, who have a different mother and are not involved in these dependency proceedings. When this case commenced, the children lived with mother and the maternal grandparents in an apartment, and on the weekends stayed with father at a home he has shared with two friends since 2015.

In June 2018, a general neglect and physical abuse referral brought the family to the attention of the Department of Children and Family Services (DCFS). According to the referral, mother,

¹ All subsequent statutory references are to the Welfare and Institutions Code.

an aggressive alcoholic, grabbed then-three-year-old son by the arm and threw him inside of a bedroom at their home.

1. Parents' History of Substance Abuse and Mother's Physical Abuse

During its investigation, DCFS discovered that the parents had a long history of substance abuse. Mother began using alcohol in 2004, and used methamphetamines with father in 2012 until she became pregnant with daughter later that year. Mother began using methamphetamines again after son was born in 2014. Around August 2017, mother began drinking "almost one bottle a day" of vodka. In January 2018, mother was admitted into a rehabilitation program but was expelled a month later due to an altercation with another patient. In February 2018, mother stopped taking her medication for depression and anxiety because she was no longer receiving medical benefits. At the time of DCFS's June 2018 investigation, mother's alcohol and methamphetamine abuse persisted. Through the investigation, DCFS learned that mother physically abused the children by striking them and pulling their hair. Father appeared to be aware that there were problems in mother's home, as he informed DCFS that daughter was fearful of and flinched around mother. Following DCFS's involvement, mother enrolled in a drug rehabilitation program.

Father likewise had an extensive history with drugs. He started using marijuana when he was 16, and began using methamphetamines and heroin in his early 20's. (Father is currently 30 years old.) Father stopped using heroin in 2010 but continued using methamphetamines until 2015, when he moved in with friends M.B. and J.B., who helped him obtain sobriety. He stopped using methamphetamines largely because the drug abuse caused him to be homeless for several years. Father never attended a substance abuse program. Despite ending his use of

heroin and methamphetamines, father continued to use marijuana.

Father uses cannabinoid substances daily, sometimes twice a day, allegedly for pain management. He was shot in the arm in 2016, and told DCFS that he uses marijuana at night before going to bed to help him sleep. Father has used cannabinoid substances during the children's visits, leaving their supervision to his roommates. Father's roommates, M.B. and J.B., have been present to supervise the children when father was under the influence. Daughter told the DCFS social worker that she has seen a "thing [father] put[s] in [his] mouth and blow[s] smoke out." She described the "thing" as having different colors, being about the size of a cup, and the smoke as being "white, with brown and orange on it"

When DCFS commenced its investigation, father consented to an on-demand drug test, and on July 31, 2018, the results showed that father tested positive for cannabinoids with a level of 6,946 ng/ml. On September 7, 2018, father again tested positive for cannabinoids with a level of 2,135 ng/ml.² The trial court found the test results "high." Father said he was willing to cooperate with DCFS and court orders, and participate in a drug program if needed.

2. Section 300 Petition

On August 1, 2018, DCFS filed a petition alleging the children were at a risk of harm under section 300, subdivisions (a), (b)(1), and (j) due to: (1) mother's physical abuse, (2) mother's history of mental and emotional problems, and (3) both parents' historical and current substance abuse. DCFS opined that, given the totality of the evidence, there was a high risk for future abuse and neglect, "endangering the physical and emotional well-being

² The cutoff screen for detecting marijuana is at 50 ng/ml.

of the child[ren],” and thus recommended the continued attention of the court and department to ensure the children’s safety.

On August 2, 2018, the juvenile court released the children to the parents’ care on the condition that the children reside with the maternal grandmother and that mother remain in her substance abuse program. The court ordered referrals for family maintenance services and random testing for both parents.

3. Jurisdiction and Disposition Hearing

On October 9, 2018, the court held the jurisdiction disposition hearing. Mother pled no contest to the allegations of abuse and neglect against her. Father argued his marijuana use did not pose a risk to the children as he uses outside their presence, while they are under adult supervision or sleeping, and he tries to not use on the weekends when they visit. Father submitted a physician recommendation statement signed by a doctor and dated October 4, 2018. The recommendation stated that father “may benefit from the use of medical marijuana,” but did not identify an ailment to be treated by the cannabis. In the recommendation statement, the physician wrote that he “informed [father] not to drive, operate heavy machinery or engage in any activity that requires alertness while using medical marijuana.”

DCFS argued that father uses marijuana daily, as evinced by his test results showing high levels of cannabinoids, and that his marijuana abuse interferes with his care for his two children, who require constant supervision and care due to their young age. DCFS highlighted that five-year-old daughter observed father using marijuana. DCFS pointed out that father never completed a drug program and noted that father began using marijuana in 2004, long before the medical marijuana recommendation he received a week prior to the jurisdiction hearing.

In addition to sustaining the four uncontested counts against mother, the court sustained the section 300, subdivision (b) count of the petition regarding father's substance abuse. (See *In re Alexander C.* (2017) 18 Cal.App.5th 438, 449-450 [finding a parent's long-term daily drug use, coupled with the children's awareness of such use, is sufficient to bring children within the jurisdiction of the court].) The court noted the visit date on the medical marijuana recommendation was five days prior to the hearing, and that father's use predated his children's birth. The court observed the doctor's recommendation failed to identify the medical condition for which the marijuana was recommended. The court also emphasized the fact the physician advised father not to engage in activities requiring alertness while using marijuana. The court understated parenting a three- and five-year-old requires alertness.

After finding the children dependents of the court, the court ordered mother and father to retain physical custody, with the condition that the children live in the maternal grandmother's home. The court ordered mother to attend a full drug and alcohol program with aftercare, parenting classes, individual counseling, mental health counseling, a 12-step program, and random weekly drug and alcohol testing. The court ordered father to attend a substance abuse treatment program, parenting classes, individual counseling, and random weekly drug and alcohol testing.

Father filed a timely appeal. Mother did not appeal.

DISCUSSION

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) In dependency cases, the court asserts jurisdiction with respect to a child when one parent's conduct has triggered the statutory

prerequisites listed in section 300. (*Id.* at p. 1491.) Thus, “a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings.” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) This is because the appellate court generally “cannot render any relief to [the parent] that would have a practical, tangible impact on his position in the dependency proceeding.” (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492.) Under such circumstances, the appeal is considered not justiciable, and must be dismissed. (*Id.* at pp. 1489-1490.)

Here, father contests only one of the five jurisdictional findings. Even if we reversed that finding, we are unable to offer father any tangible relief because the sustained jurisdictional findings about mother’s substance abuse, mental and emotional problems, and physical abuse still stand.

Father nonetheless asks this court to exercise its discretion to consider the merits of his appeal pursuant to *In re Drake M.* (2012) 211 Cal.App.4th 754, 762 (*Drake M.*). Under *Drake M.*, we may address the merits of a challenge to a jurisdictional finding against one parent where the finding serves as a basis for dispositional orders challenged on appeal, or where the finding could be prejudicial to the appellant or have negative consequences. (*Id.* at pp. 762-763.) Father argues we should address jurisdiction because (1) he challenges the disposition order requiring him to participate in a substance abuse program and drug testing, and (2) the court’s finding that he is an offending parent will have “far-reaching implications,” perhaps even leading to “termination of [father’s] parental rights” to his children.

Father’s arguments regarding disposition are unpersuasive. The juvenile court has broad discretion to make dispositional orders that would best serve a child’s interest.

“[T]here need not be a jurisdictional finding as to the particular parent upon whom the court imposes a dispositional order.” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.) The dispositional order need only be reasonable and supported by the record before the court. (*Ibid.*) Thus, even if we were to adjudicate father’s appeal in his favor, the juvenile court dispositional orders as to father would be affirmed if supported by substantial evidence.

Here, substantial evidence of father’s extensive drug use and dependence on marijuana supported the dispositional orders. Father continued to use marijuana daily, sometimes twice a day, and has admitted to being high around the children. The children observed him smoking, and the oldest described how he smoked in detail and in a manner that did not describe cigarette smoking. The record supports the court’s order requiring father to attend a drug treatment program and random drug testing. Father’s argument, that we should address the jurisdictional findings because of its impact on dispositional orders as to him, fails.

To the extent father contends the jurisdictional finding against him will have “far-reaching implications,” this argument is speculative. Even with the jurisdictional findings, the juvenile court placed the children with father and mother. We decline to exercise our discretion to address the merits of father’s appeal.

DISPOSITION

The appeal is dismissed.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

KIM, J.